

## **REMARKS**

### **FORMAL MATTERS:**

Claims 39-47 remain pending after entry of the amendments set forth herein. Claims 1-38 were previously cancelled.

By this Amendment, the specification has been amended to update the status of the parent application, and claims 39 and 42 have been amended. Support for these amendments is found throughout the specification and particularly in Figs. 1A, 1B, 2A and 2B. Accordingly, no new matter has been added.

### **INFORMATION DISCLOSURE STATEMENT:**

The Applicants note that an Information Disclosure Statement (IDS), including an SB/08A form, was submitted in this application on September 21, 2004. The Applicants respectfully request that the Examiner initial and return this SB/08A form, thereby indicating that the references cited in the IDS have been reviewed and made of record. For the Examiners convenience, a copy of this form is enclosed herewith.

### **DOUBLE PATENTING**

Claims 39-41 were rejected under obviousness-type double patenting as being unpatentable over claims 26-33 of U.S. Patent No. 6,721,586, and claims 42-47 were rejected under obviousness-type double patenting as being unpatentable over claims 1 and 16-19 of U.S. Patent No. 6,721,586. While Applicants do not acquiesce to the rejection, a Terminal Disclaimer is being submitted herewith to advance prosecution of this application.

### **REJECTIONS UNDER §102**

Claims 39-45 were rejected under 35 U.S.C. §102(a) as being anticipated by WO 01/34029.

As amended, independent claims 39 and 42 provide for inner and outer electrodes (claim 39) and first and second electrodes (claim 42) which have positions which are fixed relative to each other. WO 01/34029 discloses a syringe type device where the electrodes are moveable relative to each other. WO

01/34029 does not disclose, suggest or teach otherwise. In fact, to fix relative position of the first electrode (32) and the second electrode (36) of WO 01/34029 would make it inoperable for the intended purpose.

**REJECTIONS UNDER §103**

Claims 46 and 47 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of WO 01/34029.

For at least the reasons discussed above, the subject matter of the rejected claims is not obvious in view of WO 01/34029.

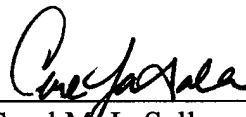
**CONCLUSION**

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number LIFE-025CON.

Respectfully submitted,  
BOZICEVIC, FIELD & FRANCIS LLP

Date: 02/01/05

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Enclosure(s): Copy of IDS SB/08A form filed September 21, 2004; Terminal Disclaimer

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